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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 DALE MITCHELL,

11                   Plaintiff,

12                   v.

13 HAROLD CLARK, *et al.*,

14                   Defendants.

15                   Case No. C07-5144RBL

16                   ORDER TO TRANSFER  
17                   MATTER TO E.D. OF  
18                   WASHINGTON

19 Plaintiff's complaint filed pursuant to 42 U.S.C. § 1983 alleges violation of his constitutional or  
20 federal rights based on the allegation that he has been denied his due process rights when he challenged an  
infraction he received on or about June 14, 2006. Plaintiff also alleges he has been denied religious  
21 freedoms protected by federal laws. All specific allegations arose while Plaintiff was in custody at the  
Airway Heights Correction Center near Spokane, Washington. .

22 Plaintiff names several individuals, including Dean Mason, Daniel Williams, and Harold Clarke,  
23 who maintain their Department of Corrections' office in Thurston County, Washington. However, the  
court notes that each of these individuals would be subject to summary dismissal from the lawsuit based on  
24 Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 n.58 (1978)(a defendant cannot be  
held liable under 42 U.S.C. § 1983 solely on the basis of supervisory responsibility or position), and  
25 Padway v. Palches, 665 F.2d 965 (9th Cir. 1982)(a theory of *respondeat superior* is not sufficient to state  
a § 1983 claim). Each of the above named individuals are named as a defendant based on Plaintiffs

1 allegations that they hold a supervisory role in overseeing the implementation of the grievance program  
2 and/or the religious policies of the Department of Corrections.

3 Plaintiff has clearly filed this action in the wrong district. The Complaint clearly challenges  
4 conditions of confinement while plaintiff was housed in the Airway Heights Correction Center. Plaintiff  
5 names several defendants, including Maggie Miller-Stout, Robert Herzog, Archie Grant, and Renate  
6 Archer, who are employed at the Airway Heights facility, and who may have personally participated in the  
7 alleged acts.

8 Accordingly, this matter should have been filed with the United States District Court for the  
9 Eastern District of Washington, and it should be transferred there pursuant to 28 U.S.C. § 1331(b).

10 The Clerk is directed to send a copy of this Order to plaintiff, and to send the Complaint and all  
11 documents in support, along with a copy of this Order, to the District Court Clerk for the Eastern District  
12 of Washington.

13 DATED this 6<sup>th</sup> day of April, 2007.

14   
15 Ronald B. Leighton  
16 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE

17 Recommended for entry this  
18 2nd day of April, 2007.

19 J. Kelley Arnold  
20 J. Kelley Arnold  
United States Magistrate Judge  
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